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PRE-APPEAL BRIEF REQUEST FOR REVIEW	Docket Number (Optional)
	A-9158 (191930-1555)

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____ Signature _____ Typed or printed name _____	Application Number 10/629,839	Filed July 30, 2003
	First Named Inventor Pinder, et al.	
	Art Unit 2131	Examiner Chai, Longbit

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
     Note: No more than five (5) pages may be provided.

I am the

- [ ] applicant/inventor.

- [ ] assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)

- [ ] attorney or agent of record. Registration number _____

- [X] attorney or agent acting under 37 CFR 1.34.   58,169
  Registration number if acting under 37 CFR 1.34 _____

Signature

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Telephone number
August 23, 2006

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

- [ ] *Total of _____ forms are submitted.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:

Pinder, et al.

Serial No.: 10/629,839

Filed: July 30, 2003

Confirmation No.: 4740

Group Art Unit: 2131

Examiner: Chai, Longbit

Docket No.: A-9158 (191930-1555)

For: **Methods and Apparatus for Providing a Parital Dual-Encrypted Stream in a Conditional Access Overlay System**

REMARKS IN SUPPORT OF
PRE-APPEAL BRIEF CONFERENCE

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

Applicants submit the following remarks in support of a Request for a Pre-Appeal Brief

Conference.

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REMARKS

I.   Status

Claims 1-5, 7-9, and 14-17 are rejected under 35 U.S.C. 102(e) as allegedly being anticipated by *Unger, et al.* (U.S. Publication No. 2003/0026453). Claims 6, 10-13, and 18-20 are rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over *Unger, et al.* (U.S. Publication No. 2003/0026423) in view of *Faulkner, et al.* (U.S. Patent No. 5,144,669). Applicant traverses this rejection and respectfully submits that the rejection of record is clearly not proper.

II.   Rejection of Independent Claims 1, 7, 14, and 16

Specifically, Applicant submits that the following clear legal deficiency exists in the rejection. Applicant respectfully submits that a representative claimed element, specifically, among others, **"passing packets of the clear stream through a multiplexer, wherein the at least one critical packet is identified in the packets of the clear stream, the critical packet of the clear stream drops and the scrambled critical packets included in the first and second encryption streams pass,"** as recited in claim 1, is not taught by the references of record either singularly or in combination. Independent claims 7, 14, and 16 include similar elements.

The Advisory Action of August 7, 2006, states that

> "Applicant's argument has no merit since the "encrypt-then–select" feature of the alleged limitation has not been recited into the claim – because the "comprising the steps of" preamble does not ascertain the exact sequence (and order) of the list claim limitations as recited – i.e. "scrambling the clear stream according to a first/second encryption method to provide a first/second encryption stream" is not necessary occur before the "aligning in time the clear stream, the first encryption stream, and the second encryption stream" and "passing packets of the clear stream through a multiplexer and etc." Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See In re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Although Applicant agrees with Examiner Chai's statement of law, Applicant respectfully submits that In re Van Geuns does not apply in this case. It is not necessary to read a limitation from the specification into the claim. The emphasized claim term includes selecting

packets from the encrypted stream. Thus, the encryption steps do occur before the selection step in the claim.

Additionally, the use of "**the** first and second encrypted streams" indicates antecedent basis to "**a** first encryption stream" and "**a** second encryption stream." Therefore, the claim elements including "**a** first encryption stream" and "**a** second encryption stream" occur before claim elements including "**the** first and second encryption streams," which is not taught in *Unger*. *Unger* does not teach, disclose, or suggest every element of the claim. *Faulkner* does not cure this deficiency. Since all elements of the claims are not disclosed, taught, or suggested by the references of record, the rejection is improper and should be withdrawn.

The Final Office Action asserts that the emphasized claim element is taught by *Unger*, Table 1, Figure 6, and Para [0058]. *See Final Office Action*, page 3. However, to understand the process of *Unger*, particular attention should be paid to Para [0056]:

> With reference to TABLE 1 ..., an exemplary embodiment of a time slice dual encryption scheme consistent with an embodiment of the invention is illustrated. For program 1 having primary video PID 101 and primary audio PID 201, during the first time period, packets having PID 101 and PID 201 are encrypted using encryption system A, while the others representing the other programs are sent in the clear. In this embodiment, secondary PIDs are also assigned to both the video and the audio. The secondary PIDs are PID 111 for video and PID 211 for audio respectively for program 1. The packets with the secondary PIDs are encrypted using encryption system B during the first time period. The next eight time periods are sent in the clear. Then for time period 10, packets having any of the above four PIDs are again encrypted followed by the next eight time periods being sent in the clear. In a similar manner, during the second period of program 2 having primary video PID 102 and primary audio PID 201 are encrypted using encryption system A and packets with their associated secondary PIDs are encrypted using encryption system B, and during the next eight time periods are sent in the clear, and so on. This pattern can be seen clearly in TABLE 1 by examination of the first nine rows. Both audio and video packets, or audio alone or video alone can be encrypted according to this technique, without departing from the invention. Also, the audio and video can have their own individual encryption sequence. In TABLE 1, P1 indicates time period number 1, P2 indicated time period number 2 and so on. EA indicates that the information is encrypted using CA system A and EB indicates that the information is encrypted using CA encryption system B.

For the sake of argument, in *Unger*, only packets with particular PIDs (critical packets) are encrypted. Thus, it is clear that the process used in *Unger* only encrypts the critical packets, which is a select-then-encrypt system. Additionally, in *Unger*, there is no further selection performed after the encryption. Since *Unger* discloses a select-then-encrypt system, it fails to disclose an encrypt-then-select system as claimed.

In *Unger*, when a critical packet is sensed in a clear stream, only the critical packet is encrypted and then multiplexed into a transmission stream. However, according to the claim presented above, an encrypt-then-select system, the clear stream is encrypted, without regard to critical packets, according to a first encryption method and encrypted, without regard to critical packets, according to a second method. Then, when the critical packet in the clear stream is sensed, already-encrypted packets corresponding to the critical packet are selected to multiplex for a transmission stream. Therefore, *Unger* does not anticipate independent claim 1, and the rejection should be withdrawn.

III.   Rejection of Dependent Claims 2-6, 8-13, 15, and 17-20

Because independent claims 1, 7, 14, and 16 are allowable over the cited references of record, dependent claims 2-6, 8-13, 15, and 17-20 (which depend from independent claims 1, 7, 14, and 16) are allowable as a matter of law for at least the reason that dependent claims 2-6, 8-13, 15, and 17-20 contain all the steps/features of their respective independent claims. *See Minnesota Mining and Manufacturing Co. v. Chemque, Inc.*, 303 F.3d 1294, 1299 (Fed. Cir. 2002) *Jeneric/Pentron, Inc. v. Dillon Co.*, 205 F.3d 1377, 54 U.S.P.Q.2d 1086 (Fed. Cir. 2000); *Wahpeton Canvas Co. v. Frontier Inc.*, 870 F.2d 1546, 10 U.S.P.Q.2d 1201 (Fed. Cir. 1989). Therefore, since dependent claims 2-6, 8-13, 15, and 17-20 are patentable over *Unger*, the rejection to claims 2-6, 8-13, 15, and 17-20 should be withdrawn and the claims allowed.

Additionally and notwithstanding the foregoing reasons for allowability of independent claims 1, 7, 14, and 16, dependent claims 2-6, 8-13, 15, and 17-20 recite further features and/or combinations of features, as are apparent by examination of the claims themselves, that are patently distinct from the cited references of record. Hence, there are other reasons why dependent claims 2-6, 8-13, 15, and 17-20 are allowable.
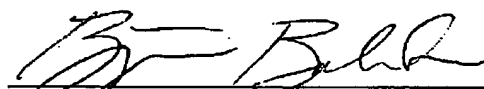
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CONCLUSION

For at least the reasons set forth above, Applicant respectfully submits that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that the now pending claims 1-20 are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested.

Respectfully submitted,

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